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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-68

13 **MARY K. WHITE,**
14 **a.k.a. MARY KATHLEEN WHITE**
15 **21251 Road U**
16 **Cortez, CO 81321**

A C C U S A T I O N

Registered Nurse License No. 520892

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
21 Department of Consumer Affairs.

22 2. On or about April 2, 1996, the Board issued Registered Nurse License Number
23 520892 to Mary K. White, also known as Mary Kathleen White ("Respondent"). Respondent's
24 registered nurse license expired on October 31, 2007.

25 **STATUTORY PROVISIONS**

26 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
27 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
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1 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
2 Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
5 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
6 (b), the Board may renew an expired license at any time within eight years after the expiration.

7 5. Code section 2761 states, in pertinent part:

8 The board may take disciplinary action against a certified or licensed
9 nurse or deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct . . .

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12 (f) Conviction of a felony or of any offense substantially related to the
13 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof . . .

14 6. Code section 2762 states, in pertinent part:

15 In addition to other acts constituting unprofessional conduct within the
16 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
person licensed under this chapter to do any of the following:

17 (a) Obtain or possess in violation of law, or prescribe, or except as
18 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as
19 defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug or dangerous device as defined in Section 4022.

20 (b) Use any controlled substance as defined in Division 10 (commencing
21 with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
22 in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety to
23 the public the practice authorized by his or her license.

24 (c) Be convicted of a criminal offense involving the prescription,
consumption, or self administration of any of the substances described in subdivisions
25 (a) and (b) of this section, or the possession of, or falsification of a record pertaining
to, the substances described in subdivision (a) of this section, in which event the
26 record of the conviction is conclusive evidence thereof . . .

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1 7. Code section 2765 states:

2 A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere made to a charge substantially related to the qualifications, functions and
4 duties of a registered nurse is deemed to be a conviction within the meaning of this
5 article. The board may order the license or certificate suspended or revoked, or may
6 decline to issue a license or certificate, when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting
8 probation is made suspending the imposition of sentence, irrespective of a subsequent
9 order under the provisions of Section 1203.4 of the Penal Code allowing such person
10 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
11 the verdict of guilty, or dismissing the accusation, information or indictment.

12 8. Code section 490, subdivision (a), states:

13 In addition to any other action that a board is permitted to take against a
14 licensee, a board may suspend or revoke a license on the ground that the licensee has
15 been convicted of a crime, if the crime is substantially related to the qualifications,
16 functions, or duties of the business or profession for which the license was issued.

17 9. Code section 4022 states:

18 "Dangerous drug" or "dangerous device" means any drug or device
19 unsafe for self-use in humans or animals, and includes the following:

20 (a) Any drug that bears the legend: "Caution: federal law prohibits
21 dispensing without prescription," "Rx only," or words of similar import.

22 (b) Any device that bears the statement: "Caution: federal law restricts
23 this device to sale by or on the order of a -----," "Rx only," or words of similar
24 import, the blank to be filled in with the designation of the practitioner licensed to use
25 or order use of the device.

26 (c) Any other drug or device that by federal or state law can be lawfully
27 dispensed only on prescription or furnished pursuant to Section 4006.

28 10. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

COST RECOVERY

11. Code section 125.3 provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS AT ISSUE**

4 12. "Morphine" is a Schedule II controlled substance as designated by Health and Safety
5 Code section 11055, subdivision (b)(1)(M).

6 13. "Cocaine" is a Schedule II controlled substance as designated by Health and Safety
7 Code section 11055, subdivision (b)(6).

8 14. "Soma," a brand of Carisoprodol, is a dangerous drug within the meaning of Code
9 section 4022 in that it requires a prescription under federal law.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Criminal Conviction)**

12 15. Respondent is subject to disciplinary action pursuant to Code sections 2761,
13 subdivision (f), and 490, subdivision (a), in that on or about October 28, 2008, in the criminal
14 proceeding titled *People vs. White, Mary Kathleen* (Super. Ct. County of Monterey, 2008, Case
15 No. MS261209A), Respondent pled guilty to violating Code section 4060 (unlawful possession of
16 a controlled substance, a misdemeanor), a crime substantially related to the qualifications,
17 functions, and duties of a registered nurse. The circumstances of the crime are as follows: On or
18 about September 11, 2007, officers with the Salinas Police Department received a report of a
19 female, who was acting irrationally outside of her apartment and was attempting to crawl under
20 cars. Officers responded to the scene and found Respondent lying on the grass outside her
21 apartment, wearing a tank top and panties. Officer Dodd searched Respondent's residence and
22 located a drawer lying on the kitchen floor that contained approximately 5 to 10 syringes. One of
23 the needles was uncapped as if it had recently been used. Officer Dodd also located 11 small
24 vials of medication that were for intravenous administration only. The officers seized the vials
25 that were in Respondent's possession, including 1 vial of morphine 2 mg, as well as 11 tablets of
26 carisoprodol 350 mg. Respondent was transported to Natividad Medical Center. Later,
27 Respondent admitted to Officer Iorio that she had taken approximately 10 Soma tablets because it
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1 was her birthday, that she smoked cigarettes that a "guy named Tsing" had laced with cocaine,
2 and that she stayed with this individual for approximately 3 days using cocaine.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Possession of a Controlled Substance)**

5 16. Respondent is subject to disciplinary action pursuant to Code section 2761,
6 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
7 subdivision (a), in that on or about September 11, 2007, Respondent possessed the controlled
8 substance morphine without a valid prescription from a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor, in violation of Code section 4060, as set forth in paragraph
10 15 above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Use of Controlled Substances and Dangerous Drugs to an Extent**
13 **or in a Manner Dangerous or Injurious to Oneself or Others)**

14 17. Respondent is subject to disciplinary action pursuant to Code section 2761,
15 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
16 subdivision (b), in that Respondent used the controlled substance cocaine and dangerous drug
17 Soma to an extent or in a manner dangerous or injurious to herself and/or others, as set forth in
18 paragraph 15 above.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Conviction Related to the Possession of a Controlled Substance)**

21 18. Respondent is subject to disciplinary action pursuant to Code section 2761,
22 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
23 subdivision (c), in that on or about October 28, 2008, Respondent was convicted of a criminal
24 offense involving possession of a controlled substance, as set forth in paragraph 15 above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 520892, issued to Mary K. White, also known as Mary Kathleen White;

2. Ordering Mary K. White, also known as Mary Kathleen White, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 8/6/09

Louise R. Bailey
LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant